THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.21579 OF 2006

DATED: 24th OCTOBER, 2006.

Between :

M/s. Sri Chaitanya Educational Committee,
Rep. by D. Venkata Subbaiah, Campus incharge,
Raghav Estates, Plot No.18 & 19, Vaddeswaram
Cross-road, NH-5 Bypass, Guntur. .. Petitioner

And

1. State Bank of India, Amaravathi Road, Industrial Estate Branch, Guntur., and 2 others. .. Respondents

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ORDER :

This writ petition is filed seeking a declaration that the action of the 1st respondent Bank in calling upon the petitioner to vacate the premises situated in Plot Nos.17, 18 and 29 of Vaddeswaram Village in Sy.Nos.16/1, 17/1A and 17/2 of Raghava Estate, Tadepalli Mandal, Guntur District as arbitrary and illegal.

It is stated that the said premises belongs to the 3rd respondent herein and the same was leased out to the petitioner under a Lease Agreement dated 21-9-2006 for the purpose of running an educational institution. While so, the 1st respondent addressed a letter dated 28-9-2006 to the petitioner advising to vacate the premises in its occupation within 10 days stating that the said premises has been mortgaged to the 1st respondent Bank as security for certain credit facilities availed by the 2nd respondent and that they are contemplating to crystallize their rights as mortgagee and proposing to take possession for further necessary action.

The petitioner contends that it is in no way concerned with the alleged loan transaction availed by the 2nd respondent with the 1st respondent Bank and since it is a third party to the alleged loan transaction and has been continuing in possession as a tenant, the 1st respondent has no right to interfere with its possession.

The learned Counsel for the petitioner vehemently contended

that the 1st respondent Bank has no authority to demand the petitioner to vacate the premises in question and the 1st respondent Bank has to work out the appropriate remedy in accordance with law against the respondents 2 and 3 for recovery of the alleged amounts due.

The learned Counsel appearing for the 1st respondent Bank under instructions stated that the property in occupation of the petitioner is a secured asset in respect of which security interest has been created in favour of the 1st respondent Bank in connection with the loan availed by the respondents 2 and 3 and also submitted that since the borrower committed default in repayment of secured debt, the same has been classified as Non-Performing Asset (NPA) and consequently having invoked the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') a notice under Section 13 (2) of the Act has already been issued.

The law is well-settled that the provisions of the Securitisation Act have overriding effect over other laws for the time being in force and if any borrower makes any default in repayment of the secured debt and his loan account is classified as NPA, under Section 13 of the Securitisation Act the secured creditor is entitled to enforce the security interest without the intervention of the Court or Tribunal following the procedure prescribed thereunder. Sub-section (4) of Section 13 of the Securitisation Act enumerates the measures that can be taken recourse by the secured debt. The procedure to be followed for the said purpose has been prescribed in detail under the Security Interest (Enforcement) Rules, 2002.

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In the circumstances, it cannot be held that the 1st respondent Bank is not entitled to proceed against the property in question merely on the ground that the same has been leased out to the petitioner. However, it is made clear that the 1st respondent Bank shall not

interfere with the possession of the petitioner in respect of the property in question without following the procedure prescribed under the Securitisation Act and the Rules made thereunder.

Writ Petition is accordingly disposed of. No costs.

G. ROHINI,
J.

Dt. 24–10-2006
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